

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

BITUMINOUS FIRE AND MARINE  
INSURANCE COMPANY AND BITUMINOUS  
CASUALTY CORPORATION

PLAINTIFFS

VS.

CIVIL ACTION NO. 4:06CV67TSL-LAA

WARREN E. HUTTO, PATRICIA HUTTO,  
LARRY STANLEY, BARBARA STANLEY,  
LAB DISCOUNT DRUG, INC., STANLEY  
DISCOUNT DRUGS, INC., CHRISTAL WEBB  
BLACKWELL, BONNIE MARY RILES, AND  
K.W., A MINOR BY AND THROUGH JEFF  
AND AMY WILLIAMS, HER NATURAL PARENTS

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This cause is before the court on the motion of plaintiffs Bituminous Fire and Marine Insurance Company and Bituminous Casualty Corporation (Bituminous) for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. In this motion, Bituminous contends that it is entitled to summary judgment that it does not owe any duties (including any duty to defend or indemnify) to any of the defendants for any claims arising out of the alleged molestation of Christal Webb Blackwell, Bonnie Mary Riles and Katherine Williams by Warren Hutto. One group of defendants, Lab Discount Drug, Warren E. Hutto and Patricia Hutto, has confessed the motion. Another group, Larry Stanley, Barbara

Stanley and Stanley Discount Drugs, has responded in opposition to the motion.

The Stanley defendants admit that since they have been dismissed as defendants in the underlying actions, plaintiffs' request for a declaratory judgment regarding any indemnity obligation under the contracts of insurance presently before this court is moot. They contend, however, that there remain issues of fact regarding plaintiffs' duty to defend (or to reimburse defendants' defense costs) as to at least some of the claims in the underlying litigation, which issues preclude summary judgment. To the point, while these defendants agree that plaintiffs had no duty to defend any intentional conduct alleged in the underlying complaints, and confess the motion to this extent, they contend that there remains the issue of whether plaintiffs owed a duty to defend them in the underlying actions to the extent the complaints in those suits alleged negligence on the part of these defendants.

This court addressed this exact issue in a declaratory judgment action brought by Maryland Casualty Company against these very defendants seeking an adjudication that the claims in the very same underlying actions were not covered under its policy. In Maryland Casualty Co. v. Lab Discount Drug, et al., Civil Action No. 4:06CV59TSL-JMR (S.D. Miss. Nov. 15, 2006), the court acknowledged the Fifth Circuit's opinion in American Guaranty and Liability Insurance Co. v. 1906 Co., 129 F.3d 802, 810 (5<sup>th</sup> Cir.

1997), in which the court predicted that the Mississippi Supreme Court would hold that "where negligence claims against an employer, such as negligent hiring, negligent training, and negligent entrustment, are related to and interdependent on the intentional misconduct of an employee, the 'ultimate question' for coverage purposes is whether the employee's intentional misconduct itself falls within the definition of an occurrence". Based on this principle, this court in Maryland Casualty observed and held as follows:

It is true that the underlying complaints charge that these defendants were negligent in various ways. However, all of the factual allegations against these defendants, whether characterized as negligence or intentional conduct, are grounded on and arise from Hutto's alleged acts of sexual molestation. Accordingly, under applicable Mississippi law, just as the policy does not extend coverage to Warren Hutto, it likewise affords his codefendants (the Stanleys and Stanley Discount Drugs) no coverage.

The pertinent policy provisions herein are not practically distinguishable from the policies at issue in Maryland Casualty, and the facts presented are identical. Accordingly, for the reasons explained more fully in Maryland Casualty, the court concludes that the motion of Bituminous herein should be granted.

It is, therefore, ordered that the motion of Bituminous for summary judgment is granted.

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED AND ADJUDGED this 23<sup>rd</sup> day of January, 2007.

/s/ Tom S. Lee  
UNITED STATES DISTRICT JUDGE